

REMARKS

I. Status of the Subject Application

Claims 1-163 are pending in the subject application. Claims 1-17, 24-34, 42-109, 112-125, and 128-163 have been deemed withdrawn. Applicant has herein canceled Claims 1-34 and 42-164 **without disclaimer or prejudice**. Applicant reserves the right to pursue patent protection for the subject matters of those canceled claims in other continuing application(s). Claims 18-23 and 35-41 stand rejected. In the present Amendment, Applicant has amended Claims 35-41 and has added Claims 165-176 that depend, either directly or indirectly, from Claim 35.

II. Double Patenting Rejection

Claims 18-23 and 35-41 have been provisionally rejected on the ground of statutory obviousness-type double patenting as being unpatentable over Claims 26-28 of co-pending Application Serial No. 11/019,143, which is also owned by Applicant.

Due to the “provisional” nature of this rejection, Applicant respectfully requests that such rejection be held in abeyance until all of the Claims of the subject application are otherwise deemed to be allowable or are canceled, at which time Applicant will address such rejection.

III. The Rejection Under 35 U.S.C. § 103

Claims 18-23 and 35-41 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,179,858 to Graham et al. (“Graham et al”). In particular, the Official Action provides that:

Graham et al. discloses in Fig. 1, a construction system comprising a lower support structure 54; a bearing wall 10 having a plurality of vertically extending studs 24 to the lower support structure 54; the vertical studs 20 are extended between upper and lower support structures, a joist rim 66 having a web 72 on the lower support structure adjacent to at least some of the vertically extending studs 20; the web 72 of the joist rim 66 to at least some of the adjacent vertically extending studs 20; a plurality

of floor joists 80 to the joist rim 66; and a floor deck 78 on the plurality of floor joists 80.

Graham et al. disclose the claimed invention as stated but do not disclose expressly the obvious method steps such as constructing; affixing and supporting. . . .

Responsive to this rejection, Applicant respectfully submits that the construction method disclosed in Graham et al. is fundamentally different from the method of amended independent Claim 35 and the Claims that depend therefrom. In particular, Graham et al. employs spaced **rods** 22 as so-called “studs”. A plurality of blocks are positioned between a plurality of spaced rods. A plurality of straps are positioned around alternate “studs” to form a lattice assembly. The Examiner contends that elements 66 are equivalent to the recited joist rim. However, Graham et al. clearly teaches otherwise. Graham provides that:

As shown in FIGS. 4 and 5, each of the floor supports 66 in the specific embodiment illustrated are **angle irons having opposite flanges 70 and 72** positioned at right angles to each other. The horizontal flange 70 of each floor support 66 has a plurality of spaced-apart holes 74 or apertures therein so as to receive rods 22 of studs 20. **As is apparent from both FIGS. 5 and 6, floor supports 66 are assembled on the studs 20 by positioning the support 66 over the distal ends 76 of the rods, aligning the rods 22 with the apertures 74 in the flange 70, and lowering the support on to the rods 22 until supports 66 rest on the spacers 26.**

Column 5, lines 5-12 of Graham et al.

Amended independent Claim 35 recites the action of “affixing a vertically extending web portion of a first joist rim to the bearing wall such that a planar first upper rim flange of the first joist rim is substantially co-planar with the planar first upper track web of the first upper track”. As indicated above, the rods 22 forming the wall extend through holes in the horizontal flange 72 of the angle 66. The angle 66 is not a joist rim. Nor are the rods 22 attached to a vertically extending web portion. Thus, for at least this reason, the subject matters of amended Claim 35 and the Claims that depend therefrom are not obvious in view of Graham et al.

Furthermore, Applicant respectfully submits that there is no teaching of record that would have led the person of ordinary skill in the art to replace the rods 22 with studs as

disclosed in the subject application and the angles 66 with joist rims that have vertically extending web portions. Making such modifications would impermissibly change the way the Graham et al. wall is constructed and operates. See Section 2143.01(vi) of the *Manual of Patent Examination Procedure* (“the proposed modification cannot change the principle of operation of a reference). Accordingly, independent Claim 35 and the Claims that depend therefrom are seen to be patentable over Graham et al.

IV. Petition For Extension of Time

Applicant hereby petitions for a three month extension of time. The PTO is hereby authorized to charge Deposit Account 11-1110 for the petition fees and any fees associated with this Amendment. If additional time is required, please consider this a petition therefor.

V. Other Pending Applications

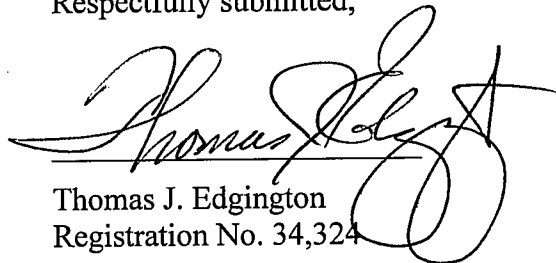
Applicant also owns U.S. Patent Application Serial No. 11/019,143, filed December 21, 2004, which is a continuation-in-part application of the subject application (the “CIP application”). A non-final Official Action issued on November 10, 2009 in connection with the CIP application. Applicant has not yet responded to that Official Action. Copies of the documents may be obtained from the PTO’s PAIR database. However, Applicant would be pleased to supply copies of any documents relating to the CIP application upon request.

VI. Conclusion

Applicant respectfully submits that all of the claims presented in the present application are in condition for allowance. Applicant's present Amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicant reserves the right to specifically address all such assertions and statements in subsequent responses. Applicant also reserves the right to seek claims of a broader or different scope in a continuation application.

Applicant has made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas J. Edgington", is written over a horizontal line. The signature is stylized with large, flowing loops.

Thomas J. Edgington
Registration No. 34,324

Attorney for Applicant

K&L Gates LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
Telephone: (412) 355-8303
Fax: (412) 355-6501